

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (“**Agreement**”) is made as of the 18 day of March 2022, between **Wood Creek Condominiums Owners’ Association, Inc.**, a Colorado nonprofit corporation (“**Owner**”), and **The New Stove Place, LLC**, a Colorado limited liability company, **d/b/a Inside & Out – Hearth & Patio** (“**Contractor**”), who agree as follows:

1. THE PROJECT

1.1 The project which is the subject matter hereof is described as follows: CONTRACTOR WILL PROVIDE ALL MATERIALS, LABOR, SUPERVISION, EQUIPMENT, AND TOOLS FOR THE OWNER’S FLUE REPLACEMENT PROJECT at the Wood Creek Condominiums located at 400 Gothic Rd., Mt. Crested Butte, Colorado 81225, as more fully described on Exhibit “A”, attached hereto and incorporated herein by this reference (“**Project**”) ¹.

1.2 Capitalized terms that are not defined in this Agreement shall have the meanings ascribed thereto in the other Contract Documents.

2. THE CONTRACT DOCUMENTS; DEFINITIONS

2.1 The “**Contract Documents**” consist of this Agreement, the documents (if any) listed on Exhibit “A” attached hereto and incorporated herein by this reference and any Modifications.

2.1.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary and what is required by any one shall be binding as if required by all.

2.2 The Contract Documents include, without limitation, the following defined terms:

2.2.1 “**Applicable Laws**” means all laws, codes, building codes, rules, regulations, ordinances and judgments, and orders of any court, arbitrator or governmental agency or authority as may be in effect from time to time.

2.2.2 “**Applicable Permits**” means all waivers, permits, authorization, licenses, or orders of or from any governmental agency or authority, which are required for performance of the Work.

2.2.3 “**Bankruptcy**” means: (a) a general assignment for the benefit of creditors; (b) the commencement of proceedings under Title 11 of the United States Code or any other bankruptcy or insolvency of debt or liquidation law or statute of the federal government or any state government; or (c) the adjudication as bankrupt or insolvent under any law or statute or the application for any action which indicates its approval or, consent to, or acquiescence in the appointment of a trustee or receiver with respect to the estate or assets, or any portion thereof.

2.2.4 “**Claim**” is a demand or assertion by one of the parties seeking an adjustment or interpretation of the Contract Document terms, payment of money, extension of time or other relief with respect to the terms of the Contract Documents.

¹ For any upgrades of the fireplace boxes that are associated with the flues, the Owner’s owners/members must contract with Contractor separately and individually for such upgrades. Such fireplace box upgrades shall not be included as part of the Work in this Agreement, and the Owner shall thus have no responsibility or liability in any way for such fireplace box upgrades.

2.2.5 “Modification” means (a) a written amendment to the Contract Documents signed by Owner and Contractor, (b) a Change Order in the form of Exhibit “B” attached hereto or (c) a written order for a minor change in the Work issued by Owner. The Contract Documents may be amended or modified only by a Modification.

2.2.6 “Site” means the location of the Project and where the Work is being performed, which is at 400 Gothic Rd., Mt. Crested Butte, Colorado 81225.

2.2.7 “Subcontractor” is a person or entity who has a direct contract with Contractor to perform a portion of the Work at the Site.

2.2.8 “Substantial Completion” or “Substantially Complete” is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work for its intended use.

2.2.9 “Substantial Completion Date” shall be no later than July 31, 2022, subject to authorized adjustments as provided herein.

2.2.10 “Work” means the construction and services described/required by the Contract Documents or reasonably inferable therefrom.

3. WORK AND OBLIGATIONS UNDER THE CONTRACT DOCUMENTS

3.1 Contractor shall perform all the Work for the complete construction of the Project in accordance with the Contract Documents. Contractor represents that it has visited the Site and is familiar with local conditions under which the Work is to be performed.

3.2 Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract Documents, including, without limitation, the responsibility to:

3.2.1 Manage and direct the Work in all particulars and coordinate the Work to complete the Project in accordance with the Contract Documents.

3.2.2 Inspect for the quality and workmanship of the Work.

3.2.3 Furnish, provide, and pay for all supervision, labor, materials, fabrications, assemblies, construction equipment and machinery, tools, water, heat, utilities, transportation and all other facilities and services necessary for the proper execution and completion of the Work.

3.2.4 Perform any and all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

3.2.5 Keep the Project and Site free from accumulation of waste materials or rubbish.

3.2.6 Replace any broken glass, remove stains, spots, marks, and dirt from painted or decorated work, clean hardware, remove paint spots and smears from all surfaces, clean fixtures and wash all concrete masonry and tile and clean all glass as necessary.

3.2.7 Ensure the accuracy of the Project lines and levels and cause the Work to be erected square, plumb, level, true and line and grade at or better than industry standard, in the place and to the correct elevation and(or) slope as indicated in the Contract Documents.

3.2.8 Arrange for tests, inspections and approvals as required by Owner and Applicable Laws.

3.2.9 Start-up and test successfully all systems and equipment included in the Work and comply fully with each manufacturer's specifications and instructions.

3.2.10 Provide security for the Site as necessary.

3.2.11 Confine operations at the Site to areas permitted by Applicable Laws, Applicable Permits, and the Contract Documents.

3.2.12 Control the blowing or spreading of dust, smoke, dirt, mud and refuse from the Work.

3.2.13 Remove all water, ice, snow and/or mud interfering with the Work.

3.2.14 Perform the Work so as not to interfere with or disrupt the business operations of Owner (or its members or tenants) or any adjacent residences, businesses and/or recreation areas.

3.2.15 Limit the activities of all parties under its control to the area(s) designated by Owner, and to protect and prevent damage or disturbance to any trees or other vegetation outside of the clearing limits, as shown on the Contract Documents.

3.3 If Contractor fails to carry out Work in accordance with the Contract Documents, Owner may issue a written order to Contractor to stop the Work until the cause for such order has been eliminated. Owner's exercise of this right shall not modify the Substantial Completion Date or the Contract Sum, nor shall Owner's rights and remedies against Contractor be limited by the exercise of such right.

3.4 If Contractor defaults in the performance of its obligations under the Contract Documents, Owner may correct such deficiencies, without prejudice to other remedies Owner may have. In such case, an appropriate Change Order shall be issued by Owner deducting from payments then or thereafter due to Contractor the cost of correcting such deficiencies, including Owner's actual, out-of-pocket expenses plus a surcharge equal to fifteen percent (15%). If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.

3.5 Owner, and all of its members/owners, representatives, employees and agents shall have the right to have full access and use of the Site.

3.6 Owner, including Owner's members/owners, may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor. Such partial occupancy or use may commence whether or not the portion is Substantially Complete. Such use or occupancy shall not constitute acceptance of Work not complying with the requirements of the Contract Documents or begin any warranty periods.

4. DATE OF COMMENCEMENT; PROSECUTION OF WORK; MILESTONES

4.1 The Work shall commence upon the date which Owner delivers to Contractor a written Notice to Proceed for the Project.

4.2 Contractor shall diligently and continuously prosecute the Work and achieve Substantial Completion no later than the Substantial Completion Date. No modifications shall be made to the Substantial Completion Date unless a written Change Order is executed by Owner in accordance with the Contract Documents.

4.3 Contractor shall acknowledge receipt of materials and equipment for installation pursuant to the Contract Documents and shall provide storage and protection for such materials and equipment. All materials delivered to the Site shall be stored and handled so as to preclude inclusion of any foreign substance(s) or any discoloration or adulteration thereof and to prevent any damage thereto.

4.4 Contractor warrants to Owner that: (i) materials and equipment furnished under the Contract Documents shall be of first class quality new, merchantable, of good quality and free from defects unless otherwise specifically required or permitted by the Contract Documents; (ii) the Work shall be free from defects and deficiencies; (iii) the Work will conform to the requirements of the Contract Documents and Applicable Laws and Applicable Permits; and (iv) the Work shall be performed in a good and workmanlike manner. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. All guarantees or warranties of equipment or materials furnished to Contractor or any Subcontractor(s) by any manufacturer or supplier shall be for the benefit of Owner. Contractor shall and hereby does covenant, warrant and agree that it shall repair or replace any and all of the Work, together with other Work which may be displaced in so doing, that does not conform with the requirements of this Section 4.4, without increase in the Contract Sum or Contract Time, for a period following the date of Substantial Completion that shall not exceed that which is permissible under Colorado law for remedying construction defects.

4.5 Contractor shall employ all such additional labor services and supervision, including such extra shifts and overtime, as may be necessary to maintain progress to achieve Substantial Completion by the Substantial Completion Date, all without an increase in the Contract Sum.

4.6 TIME IS OF THE ESSENCE IN THE PERFORMANCE BY CONTRACTOR OF THE WORK UNDER THE CONTRACT DOCUMENTS.

5. BASIS FOR PAYMENT

Owner shall pay Contractor, for Contractor's performance of the Work under the Contract Documents, the total amount of One Hundred Fifty Three Thousand, Five Hundred Sixty Four Dollars and Seven Cents [\$153,564.07] ("Contract Sum"). The Contract Sum includes, without limitation, the entire amount of overhead and profit payable to Contractor in connection with the Work, all taxes relating to the Work and any and all royalties and license fees applicable to the Work.

6. CHANGES IN THE WORK

6.1 Changes in the Work may be accomplished after execution of the Contract Documents, and without invalidating the Contract Documents, only by a written change order in the form of Exhibit B or construction contract directive executed by Owner (each a "Change Order"). There shall be no verbal change orders and under no circumstances shall Contractor have the right to rely on the same.

6.2 Owner may order changes in the Work consisting of additions, deletions, or other revisions of the Work, with the Contract Sum and/or the Substantial Completion Date being adjusted accordingly (individually

a “Change” and collectively “Changes”). All such Changes in the Work shall be authorized by Change Order and shall be performed pursuant to the Contract Documents.

6.3 Within ten (10) days of receipt of an order for Change(s) from Owner, Contractor shall prepare and submit to Owner, a detailed breakdown (with all supporting documentation) sufficient to enable Owner to determine the effect on the Contract Sum, if any, and the effect to the Substantial Completion Date, if any, of a proposed Change.

6.4 The amount of any adjustments resulting from a Change Order approved by Owner shall be determined by Owner by calculating the net cost of such Change(s) on the basis of the reasonable expenditures and savings attributable to the Change. Owner shall, upon verifying Contractor’s net cost for effecting the Change, adjust the Contract Sum by the amount thereof.

6.5 Notwithstanding and pending resolution of any dispute regarding any adjustment to the Contract Sum or the Substantial Completion Date with respect to a Change, Contractor shall promptly proceed with Work required by any Change Order issued by Owner.

6.6 No Change in the Work, whether by alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a change to the Substantial Completion Date unless and until such addition or change has been authorized by a written Change Order executed and issued in accordance with and in strict compliance with the Contract Documents.

7. SUBCONTRACTS AND OTHER AGREEMENTS

7.1 Those portions of the Work that Contractor does not customarily perform with Contractor’s own personnel shall be performed under subcontracts and/or by other appropriate agreements with Contractor (individually a “Subcontract” and collectively “Subcontracts”). All Subcontracts shall (a) provide that Owner is an express third-party beneficiary of the Subcontract; (b) require that any Work being performed by a Subcontractor at any tier shall be in accordance with the requirements of the Contract Documents; and (c) require that all Subcontractors at any tier submit all claims for additional costs, extensions of time, damages for delays or otherwise with respect to the Work to Contractor.

7.2 All Subcontractors and Subcontracts shall conform to the applicable provisions of the Contract Documents and Contractor shall require each Subcontractor to be bound to Contractor by the terms of the Contract Documents. Owner shall have the right to review and approve each form of Subcontract.

7.3 Contractor shall maintain at all times a full-time management and supervisory staff of competent persons at the Site to coordinate and provide general direction of the Work and progress of Subcontractors on the Project, if any.

7.4 Contractor shall pay and shall indemnify and hold Owner harmless from all taxes arising out of the Contract Documents and the Work performed for Contractor by its employees and Subcontractors, if any.

8. PAYMENTS

8.1 Contractor shall submit applications for payment to the Owner (each, an “Application for Payment”) in accordance with the provisions herein:

8.1.1 Contractor shall submit the following to Owner with each Application for Payment referencing the Project: (a) Contractor’s progress estimate and invoice in triplicate, completed in accordance with the Contract

Documents, along with proper back-up documentation in a form satisfactory to Owner; and (b) executed conditional waivers and release of liens for itself and each Subcontractor, Sub-subcontractor and materialman (if applicable) for the period covered by the Application for Payment, in a form satisfactory to Owner. Owner shall be entitled to adjust Contractor's progress estimate to the amount which Owner reasonably believes to be the actual amount earned by Contractor during the applicable time period, and Owner shall only be responsible for payment to Contractor of that adjusted amount.

8.1.2 Provided the requirements of the Contract Documents are fulfilled and the Application for Payment is thus appropriate, Owner shall make payment to Contractor not later than 30 days following the date of the Application for Payment.

8.2 All or part of the payments to Contractor may be withheld by Owner, and/or Contractor may be back-charged, to the extent that: (a) Contractor is indebted to Owner pursuant to the Contract Documents; (b) defective Work has not been remedied; (c) Contractor has failed to pay Subcontractors at any tier, suppliers of all tiers, employees, laborers, union trust funds and/or taxing authorities; (d) any claim or lien by any third party has been asserted or threatened with respect to the Work; (e) Owner has a reasonable basis to believe that the Work cannot be completed for the unpaid portion of the Contract Sum by the Substantial Completion Date; (f) Owner or any Subcontractor or supplier have been injured or damaged by Contractor's performance or failure to perform the Work; (g) Contractor fails to submit waivers of lien rights and/or releases of claims as required in the Contract Documents or fails to provide certified payroll data when requested by Owner; or (h) the Work has not been carried out in accordance with the Contract Documents.

8.2.1 Amounts withheld or retained by Owner from prior progress payments shall not be due to Contractor until the latest to occur of the following: (a) Substantial Completion of the Work, and (b) the curing of all deficiencies.

8.2.2 As the same relates to a particular Application for Payment, Contractor shall deliver the executed unconditional releases as to itself, each Subcontractor, and materialman (if applicable) to Owner not later than fifteen (15) days following each payment by Owner.

8.3 When Contractor considers that the Work is Substantially Complete, Contractor shall prepare and submit to Owner a comprehensive list of all punchwork and other items to be completed or corrected prior to final payment. Upon receipt of Contractor's list of punchwork, Owner may inspect the Project to determine whether Substantial Completion of the Work has occurred and to identify any additional punchwork items to be added to the punchwork list.

8.3.1 Owner shall be entitled to withhold an amount equal to one hundred fifty percent (150%) of the estimated cost to complete or correct all punchwork and other items included on such list from any amounts to be paid to Contractor.

8.3.2 When the Work or designated portion thereof is Substantially Complete, Owner may prepare a "Certificate of Substantial Completion" which shall establish the date of Substantial Completion and fix the time within which Contractor shall finish all items on the punchwork list accompanying the Certificate of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work.

8.4 Upon completion of the punchwork items, Contractor shall notify Owner that the Work is ready for final inspection and acceptance and shall submit to Owner a final Application for Payment. Owner will inspect the Work and, when Owner finds the Work acceptable and the Contract Documents fully performed, Owner shall issue final payment to Contractor in accordance with subsection 8.4.1 below.

8.4.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by Owner to Contractor within thirty (30) days after the date of the last of the following to occur: (a) Contractor has fully performed the Contract Documents, except for Contractor's responsibility to correct Work as provided in the Agreement, and to satisfy other requirements, if any, which extend beyond that payment; (b) all governmental, insurance and testing agencies have issued all certificates, licenses and approvals that are preconditions to Owner's use of the Project, if any are required; (c) Owner has received conditional lien waivers from Contractor for itself, each Subcontractor, and materialman (if applicable) or, alternatively has received from Contractor a bond or bonds to release the Project and Owner from the effects of any liens; and (d) Owner has received assignments from Contractor and Subcontractors of at any tier of all assignable warranties of equipment and materials incorporated in the Work from the original manufacturers and suppliers.

8.4.2 Not later than thirty (30) days following final payment by Owner, Contractor shall deliver to Owner an appropriate waiver of lien rights and an executed unconditional release of claims against Owner and the Project, for itself, each Subcontractor, and materialman (if applicable).

8.5 No payment, including final payment, shall be construed as an acceptance of defective or incomplete work, and Contractor shall remain responsible for its performance conforming to the requirements of the Contract Documents. The making of final payment shall not constitute a waiver of any claims by Owner against Contractor.

9. LIENS

9.1 If any lien, Notice of Intent to File a Lien Statement, Lien Statement, stop notice or claim is recorded or served in connection with the Work, unless caused by Owner's failure to make payments pursuant to the Contract Documents, Contractor shall, immediately and at its own expense, record or file, or cause to be recorded or filed, in the office of the county recorder in which the lien, stop notice, notice, or claim was recorded, or with the person(s) on whom the lien, stop notice, notice, or claim was served, a bond executed by a good and sufficient surety, and approved by Owner, in a sum equal to one hundred fifty (150%) percent of the amount of such lien, stop notice, notice, or claim, which bond shall guarantee the payment of any amounts which the claimant may recover on the lien, stop notice, notice, or claim, together with the claimant's costs of suit in the action if the claimant recovers therein.

9.2 If Contractor fails to cause any lien to be removed from the Project or any stop notices, or other notices to be negated as herein provided, Owner may employ whatever means it may deem appropriate, in its sole discretion, to cause the lien to be removed, and the effect of any stop notices or other notices to be negated. Contractor shall, upon demand, reimburse Owner for all costs, including without limitation actual attorneys' fees incurred by Owner in connection with any suit, lien or stop notice. Owner may offset any such costs against amounts otherwise owing to Contractor hereunder.

10. UNCOVERING AND CORRECTION OF WORK

10.1 If a portion of the Work is covered contrary to a request by Owner or contrary to requirements specifically expressed in the Contract Documents, such Work must, if required in writing by Owner, be uncovered for Owner's examination and be replaced at Contractor's expense without change to the Contract Sum or Substantial Completion Date.

10.2 Contractor shall promptly correct Work rejected by Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not

fabricated, installed or completed. Costs of correcting such rejected Work, including, but not limited to, additional testing and inspections and/or expenses made necessary thereby, shall be at Contractor's expense.

10.3 After the date of Substantial Completion of the Work, or designated portion thereof, or after the date for commencement of warranties established under Section 4.4 of this Agreement ("Correction Period"), any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct such nonconforming Work promptly after receipt of written notice from Owner to do so and without further payment or reimbursement, provided said notice is received within the permissible timeframes for remedying construction defects under Colorado law. Owner shall give such notice after discovery of the condition. If Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from Owner, Owner may correct the nonconforming Work at Contractor's expense. The Correction Period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

10.4 Nothing contained in this Section 10 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Furthermore, nothing contained in the Contract Documents shall in any way limit the right of Owner to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by Colorado law, and the foregoing shall be in addition to any other rights and remedies Owner may have hereunder or at law or in equity.

11. TERMINATION OR SUSPENSION OF THE CONTRACT

11.1 If Contractor shall default in the performance of its obligations under the Contract Documents, then Owner shall have the right to: (a) terminate in whole or in part the Contract Documents and the Work thereunder and Contractor shall not be entitled to any further compensation whatsoever for any Work undertaken or otherwise, except as specifically provided in this Section; (b) take possession of and use all or any part of Contractor's materials and supplies used by Contractor in the performance of the Work and to use such property in the completion of the Work; and (c) complete all or any portion of the Work in any manner it deems desirable, including engaging the services of other parties therefor. In addition, Owner (and/or Owner's designee, including any substitute contractor selected by Owner) shall have the right, in Owner's sole discretion, to assume all necessary or desirable contracts and prosecute the Work, and Contractor agrees to take all reasonable actions in furtherance of the foregoing, including but not limited to, ensuring that all Subcontractors, if any, acknowledge Owner (and/or Owner's designee, including any substitute contractor selected by Owner) as a permitted assignee and third-party beneficiary to such Subcontracts entitled to enforce the provisions of such Subcontracts to Owner's benefit. Any such act by Owner shall not be deemed a waiver of any other right or remedy of Owner. If after exercising any such remedy the cost to Owner of the performance of the balance of the Work is in excess of that part of the Contract Sum (including amounts retained from Contractor) which has not previously been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse Owner for such excess within ten (10) days of receipt of Owner's demand for reimbursement, and any other damages incurred by Owner due to Contractor's breach, including but not limited to any liquidated damages payable to Owner under the Contract Documents.

11.1.1 If Contractor is or becomes subject to any Bankruptcy, Owner shall have the right to terminate the Contract Documents and pursue the rights set forth above in Section 11.1.

11.1.2 Owner reserves the right to terminate the Contract Documents, without regard to fault or breach of Contractor, upon not less than seven (7) days written notice to Contractor, effective immediately unless otherwise provided in said notice. In the event of such termination, and concurrently with the receipt by Owner of satisfactory lien releases from Contractor, Subcontractors at any tier, suppliers of all tiers and materialmen, Owner shall pay

as the sole amount due to Contractor in connection with the Project that portion of the Contract Sum due for non-defective Work performed to the date of termination. In no event shall Owner be responsible for Contractor's lost profits, overhead or consequential damages.

11.1.3 Upon a determination by a court that termination of Contractor or its successor in interest pursuant to Sections 11.1, 11.1.1 or 11.1.2 was wrongful, Contractor's remedy for wrongful termination shall be limited to the recovery of the payments set forth in Section 11.1.2.

11.1.4 Upon termination of the Contract Documents for any reason, Contractor shall: (a) forthwith withdraw its employees, workmen, machinery and equipment from the Site in an orderly manner, as directed by Owner; (b) within twenty (20) days after such termination, furnish Owner with a complete accounting of the amounts incurred to the date of termination together with a final status report updating the progress of the Work up to the date of termination; (c) within five (5) days after said termination, deliver to Owner all drawings available, and all other of Contractor's engineering, procurement, accounting and construction documents and records relating to the Work performed under the Contract Documents; and (d) within five (5) days after said termination and if Owner so elects, assign to Owner (and/or) Owner's designee, including any substitute contractor selected by Owner) all of Contractor's interest in any Subcontracts and purchase orders that Owner so designates in writing.

12. INSURANCE

Unless otherwise agreed to in writing by Owner, Contractor agrees to provide and maintain, at Contractor's sole cost and expense, the following insurance coverages:

12.1 Types of Insurance:

12.1.1 Workers' Compensation. Contractor will provide Workers' Compensation insurance with policy limits as required by law, and Employers Liability coverage, with policy limits of \$1,000,000 each accident for Bodily Injury by Accident; \$1,000,000 each employee for Bodily Injury by Disease; and \$1,000,000 policy limit for Bodily Injury by Disease.

12.1.2 Commercial Auto Coverage. If Contractor's Work involves the ownership, maintenance or use of an automobile, Contractor will provide Commercial Auto coverage with limits of not less than \$1,000,000 combined single limit, including coverage for owned, hired, and non-owned vehicles with a waiver of subrogation in favor of, and shall list as additional insureds Owner, and any other persons and entities Owner shall designate.

12.1.3 Commercial General Liability. Contractor will provide Commercial General Liability insurance in an occurrence form with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including, without limitation, liability arising out of premises operations, personal and advertising injury, products-completed operations, contractual liability and independent contractors. The policy shall provide a waiver of subrogation in favor of, and shall list as additional insureds Owner, and any other persons and entities Owner shall designate.

12.2 Other Requirements.

12.2.1 All policies must be written by insurance companies whose rating in the most recent Best's rating guide is not less than A (VII). Contractor will maintain the foregoing coverage in effect until the Work is completed, and, to the extent commercially available at reasonable rates, all such policies will be kept in force by Contractor until the applicable statute of limitations for construction defect claims for the Project have expired. Notwithstanding the foregoing, if Contractor procures a project-specific policy, the

completed operations coverage must be kept in effect until the applicable statute of limitations for construction defect claims has expired.

12.2.2 Contractor shall provide Owner with a copy of any insurance carrier's notice of cancellation or notice of changes to policy conditions, immediately upon receipt.

12.2.3 Certificates of Insurance with the required endorsements evidencing the coverage must be delivered to Owner prior to commencement of any Work. Notwithstanding any other provision hereof, Contractor shall provide Owner a complete copy of any policy of insurance required hereunder within five (5) business days of a written request from Owner, and hereby authorizes Contractor's brokers, without further notice to or authorization by Contractor, to immediately comply with any written request of Owner for a complete copy of any policy required hereunder.

12.2.4 If Contractor fails to secure and maintain the insurance required by this Agreement and provide satisfactory evidence thereof to Owner, Owner shall be entitled to terminate this Agreement upon reasonable notice.

12.2.5 Contractor's insurance shall be primary and non-contributory to any insurance held by Owner.

12.3 Owner and all additional insured parties listed on policies as required hereunder are third party beneficiaries. The provisions of this Section 12 shall survive the termination of this Agreement.

13. DUTY TO DEFEND AND DUTY TO INDEMNIFY

13.1 To the fullest extent permitted by law, Contractor agrees to hold harmless, indemnify, and defend Owner and its affiliates, partners, shareholders, members, owners, officers, directors, agents, employees, and attorneys (each an "Owner Indemnitee" and collectively, the "Owner Indemnitees") against any and all claims, demands, losses, liabilities, damages, disbursements, obligations, fines, penalties, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs) and costs of every kind and character ("Claims") allegedly caused by, arising out of, or attributable to (in whole or in part), the performance of the Work provided by Contractor and its agents, employees, Subcontractors, suppliers, or any person or entity under Contractor's control or supervision (collectively, "Contractor Parties") and/or any negligent or otherwise wrongful statement, act or omissions of Contractor Parties, including, without limitation, damage to the environment or infringement of any patent, trademark, copyright or other property right, regardless of whether or not such Claims are allegedly caused in part by any Owner Indemnitee. The Owner Indemnitees shall, at their election, have the right either to appoint counsel to defend against such Claims, at Contractor's expense, or to tender such Claims to Contractor for defense by counsel selected by Contractor and reasonably acceptable to the Owner Indemnitees. The Owner Indemnitees' entitlement to recovery of defense costs shall include all fees (of attorneys, contractors, expert witnesses, and others), costs and expenses incurred in good faith. In addition, the Owner Indemnitees shall be entitled to recover compensation from Contractor for all of the Owner Indemnitees' in-house expenses (including materials and labor) consumed in their defense.

13.2 The defense, indemnity and hold harmless provisions of this Agreement are intended to comply with C.R.S. § 13-21-111.5(6) and shall be read as broadly as possible while still complying with such statute. The defense, indemnity and hold harmless provisions shall survive expiration or termination hereof and shall include, but are not limited to, all claims against Owner by any employee or former employee of Contractor, and Contractor hereby waives all immunity and limitation on liability of any industrial insurance act, including the provisions of the Colorado Workers' Compensation Act, as now or hereafter amended, or other workers' compensation act, disability benefit act, or any other employee benefit act of any jurisdiction which would

otherwise be applicable in case of such claim, but such waiver is not intended to and shall not be construed or interpreted as applying or benefiting any person, except Owner. Owner and Contractor hereby certify and agree that the defense, indemnity and hold harmless provisions of this Agreement have been freely and mutually negotiated.

14. PROTECTION OF PERSONS AND PROPERTY

14.1 Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract Documents. Contractor shall give notices and comply with all Applicable Laws regarding the safety of persons and/or property and their protection from damage, injury or loss.

14.2 Contractor and its Subcontractors shall conduct the Work in a way that all Colorado-OSHA and other applicable safety guidelines are met.

14.3 The cost of any safety violation shall be the sole responsibility of Contractor.

14.4 Contractor shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept or used in or about the Site except to the extent such Hazardous Materials: (a) are necessary for the prosecution of the Work, and are so kept and utilized in full compliance with all Applicable Laws; (b) are required pursuant to the Contract Documents; and (c) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Site shall be used, stored and disposed of in compliance with all Applicable Laws relating to such Hazardous Materials. As used herein, the term "Hazardous Materials" means any hazardous or toxic materials, pollutants, contaminants or wastes and any other chemical, material or substance, the handling, storage, release, transportation, or disposal of which is or becomes prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, is or becomes known to pose a hazard to health and/or safety.

15. MISCELLANEOUS PROVISIONS

15.1 Choice of Law & Venue. The Contract Documents shall be governed by the laws of Colorado, without reference to its choice of law rules. Venue for any legal proceeding pertaining to this Agreement shall be in the Gunnison County, Colorado District Court.

15.2 Independent Contractor. In performing its obligations under this Agreement, Contractor shall be deemed an independent contractor and not an agent or employee of Owner.

15.3 Severability. If any term, covenant, or condition of the Contract Documents shall to any extent be deemed invalid or unenforceable, then the remainder of the Contract Documents shall not be affected thereby, and each term, covenant and condition of the Contract Documents shall be valid and enforceable to the fullest extent permitted by law.

15.4 Entire Agreement. and Amendment. The Contract Documents constitute the entire agreement between the parties hereto with respect to the matters covered thereby. All prior negotiations, representations and agreements not incorporated in such Contract Documents are superseded by this Agreement and the Contract Documents. No amendment of this Agreement shall be of any force or effect, unless signed by both parties, unless otherwise provided herein.

15.5 Licenses & Permits. Contractor represents and warrants that it holds a license, permit, or other special license, as required by law, if any, to perform the Work and shall keep and maintain all such licenses, permits,

and special licenses in good standing and in full force and effect at all times while Contractor is performing the Work.

15.6 Assignment. Contractor shall not assign, transfer or encumber, in whole or in part, its interest under the Contract Documents without the prior written consent of Owner, which consent Owner may withhold in its sole discretion. Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents.

15.7 Legal Compliance. In performing the Work, Contractor shall determine the applicability of, and shall ensure that the means and methods of construction comply with all Applicable Laws and Applicable Permits.

15.8 Counterparts, Electronic Delivery. This Agreement may be executed in one or more counterparts and/or delivered by facsimile or another electronic method, it being understood that all such counterparts, taken together, shall constitute one and the same instrument, and shall have the same force and effect as originals.

15.9 Notices. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served (i) four (4) calendar days after being deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, (ii) when delivered by FedEx or other comparable courier service, charges prepaid, to the parties at their respective addresses listed below, or (iii) by electronic mail, with acknowledgement of receipt. Either party may change its address for the purposes of this paragraph by giving five (5) days prior written notice of such change to the other party.

Owner: Wood Creek Condominiums Owners' Association, Inc.
c/o Wanda Bearth, Crested Butte Lodging & Property Management
P.O. Box 4034
Crested Butte, CO 81224
wanda@crestedbuttelodging.com

Contractor: The New Stove Place, LLC
d/b/a Inside & Out – Hearth & Patio
c/o Gary Silverleaf
2400 E. Main St., Suite L
Montrose, CO 81401
Gary@silverleafinc.com

15.10 Attorneys' Fees and Costs. In the event either party shall bring any action or legal proceeding alleging a breach of any provision of this Agreement, or in any manner to determine the rights or duties hereunder of either party, the substantially prevailing party shall be entitled to recover from the other party as a part of such action or proceeding, or in a separate action (brought within one year from the determination of such proceeding), reasonable attorneys' fees, expert witness fees, court costs and other reasonable expenses incurred by the substantially prevailing party.

15.11 Waiver. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself to any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

OWNER:

Wood Creek Condominiums Owners' Association, Inc., a Colorado nonprofit corporation


By: 

Name: Wanda Bearth

Its: Agent/Manager

CONTRACTOR:

The New Stove Place, LLC, a Colorado limited liability company, d/b/a **Inside & Out – Hearth & Patio**

By: 

Name: Gery Coram

Its: President

FEIN: 84-1601157

EXHIBIT "A"
Contract Documents

The Contract Documents consist of this Agreement, Modifications issued after execution of this Agreement, and the following documents:

Inside & Out-Hearth & Patio

Montrose, CO 81401
 Phone 970-249-2855
 FAX 970-249-0105

Estimate

8518

TO: Wood Creek Lodge
2022 revision
6" PIPE

DATE
2/16/2022

TERMS:

1/2 DOWN/BAL DUE AT COMPLETION

Job Name	REP
	GMC

DESCRIPTION	QTY	COST	TOTAL
8DT-48 DT 8" x 4ft Insulated Chimney Pipe Section	200	410.85	82170.00T
8DT-24 DT 8" x 2ft Insulated Chimney Pipe Section	28	248.595	6,960.66T
8DT-06 DT 8" x 6" Insulated Chimney Pipe Section	28	100.725	2,820.30T
8DT-E30K 30 Degree Offset/Return Elbows, Set Of 2	28	727.68	20375.04T
8DT-AP DT 8" Anchor Plate	28	150.465	4,213.02T
8DT-FF DT 8" Flat Roof Flashing	28	205.8408	5,763.54T
8DT-VC DT 8" Chimney Cap	28	258.7536	7,245.10T
8DT-FS DT 8" Firestop	82	104.328	8,554.90T
8DT-LB DT 8" Locking Band	294	18.0366	5,302.76T
			143405.32
REMOVE ENOUGH STEEL SIDING FROM EACH CHASE TO GAIN ACCESS. STORE AND PROTECT ON SITE FOR RE USE. CUT ACCESS HOLES AS NEEDED TO REPLACE ALL PIPE AND FIRE STOPS USE STRAPS, FIRE STOPS,AND SUPPORTS ALL THE WAY UP EACH CHINMEY TO HOLD IN PLACE SECURELY INSTALL NEW CHIMNEY CAP ON EACH UNIT INSTALL NEW VERTICAL TERMINATION ON EACH UNIT PATCH ALL HOLES CUT IN CHASES AND REPLACE STEEL SIDING INCLUDES ROUGH TERRAIN MANLIFT THIS PRICE IS GOOD UNTIL 3-15-22. STEEL CONTINUES TO RISE WEEKLY DEDUCT \$15000 FOR THE UNITS USING 6" PIPE	28	750.00	21000.00
Sales Tax-State		15000.00 2.90%	15000.00 4,158.75

SUBMITTED BY

ACCEPTED BY

TOTAL \$153564.07

EXHIBIT "B"
CHANGE ORDER No. _____
Project No. _____

Contractor: _____
 Date: _____
 Agreement Date: _____
 Change Order No.: _____
 Project Name: _____
 Project Description: _____

Except as noted herein, all terms and conditions of the Agreement remain unchanged.

The following modifications are to be completed:

If Contractor's Proposal is included in the description of the Work, it is included only to the extent that it does not contradict any terms or conditions in the Agreement. In the event that there is a contradiction between the Agreement or this Change Order and Contractor's Proposal, the terms and conditions of the Agreement or this Change Order will control.

Change in the Project Construction Schedule:

This Change Order represents all compensation, time extensions and other claims of Work as outlined above.

ACCEPTED UPON THE TERMS AND CONDITIONS STATED HEREIN:

This C.O.:	
Previous C.O.'s:	
Total C.O.'s to Date:	\$0.00
Original Contract Amount:	\$0.00
Revised Contract Amount to Date:	\$0.00

OWNER:
 [_____] _____
 By: _____
 Name: _____
 Title: _____

CONTRACTOR:
 [_____] _____
 By: _____
 Name: _____
 Title: _____